187.

# SUPREME COURT OF THE UNITED STATES.

## No. 65.

UNITED STATES, PLAINTIFFS IN ERROR,

vs.

WILLIAM LINN & AL.

---

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF ILLINOIS.

---

INDEX.


| | Original. | Print. |
|---|---|---|
| Writ of Error | 1 | 3 |
| Citation | 3 | 4 |
| Service of Citation | 4 | 4 |
| Style of Court, appearance of parties, &c. | 5 | 5 |
| Amended declaration | 6 | 5 |
| Copy of Bond | 15 | 9 |
| Defendant's Pleas | 17 | 10 |
| Separate plea of Joseph Duncan | 20 | 11 |
| Replication to Defendant's pleas | 21 | 12 |
| Replication to Defendant Duncan's plea | 23 | 13 |
| Causes of Demurrer | 24 | 13 |
| Plea of defendant Duncan sustained | 25 | 13 |
| Jury sworn, verdict and judgment | 26 | 14 |
| Biil of Exceptions | 27 | 15 |
| Clerk's Certificate | 35 | 18 |


*S. D. Langtree, Print.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the circuit court of the United States for the District of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the Judgment of a plea which is in the said circuit court before you, or some of you, between the United States of America, plaintiffs, and William Linn, David B. Waterman, Lemuel Lee, James M. Duncan, William Walters, Asahel Lee, William L. D. Ewing, Alexander P. Field and Joseph Duncan, defendants, manifest error hath happened to the great damage of the said United States of America, as by their complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

[L. S.] Witness, the honorable Roger B. Taney, Chief Justice of the said Supreme Court, this second Monday of January, in the year of our Lord one thousand eight hundred and forty-one.

JAMES F. OWINGS,
*Clerk of the Circuit Court of the United States for the District of Illinois.*

Allowed,

JOHN McLEAN,
*Justice Sup. Court U. States.*

The answer of John McLean, Esq., presiding Judge of the Circuit Court within named.

The record and proceedings of the plaintiffs, whereof mention is within made, with all things concerning the judgment, I certify to the Supreme Court within mentioned, at the day and place within contained in a certain schedule to this writ annexed, as within I am commanded.

JOHN McLEAN.

UNITED STATES OF AMERICA,

To William Linn, David B. Waterman, Lemuel Lee, James M. Duncan, William Walters, Asahel Lee, William L. D. Ewing, Alexander P. Field and Joseph Duncan, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Illinois, wherein the United States of America are plaintiffs in error and you are defendants in error, to shew cause, if any there be, why judgment rendered against the said United States of America, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John McLean, one of the justices of the Supreme Court of the United States, and presiding Judge of the Circuit Court of the United States for the District of Illinois, this twelfth day of June, in the year of our Lord one thousand eight hundred and forty-one.

JOHN McLEAN,
*Justice Sup. Court U. States.*

I acknowledge service by delivery of a copy of the within citation, June 12, 1841.

S. T. LOGAN,
*Atto. for defts. within named.*

I acknowledge service by delivery of a copy of the within citation this 12th day of June, in the year of our Lord 1841.

W. WALTERS,
*one of the defendants within named.*

Pleas in the Circuit Court of the United States of America, for the District of Illinois, before the Judges thereof, of the June term, in the year of our Lord one thousand eight hundred and forty-one, at the term of said Court, begun and held at the State House, in the city of Springfield, in said District.

UNITED STATES OF AMERICA,
*State and District of Illinois, ss.*

The United States of America put in their place David J. Baker, their attorney, against William Linn, David B. Waterman, Lemuel Lee, James M. Duncan, William Walters, Asahel Lee, William L. D. Ewing, Alexander P. Field, and Joseph Duncan, in a plea of debt.

UNITED STATES OF AMERICA,
*State and District of Illinois, ss.*

William Linn, David B. Waterman, Lemuel Lee, James M. Duncan, William Walters, Asahel Lee, William L. D. Ewing, Alexander P. Field, and Joseph Duncan, put in their place Levi Davis, Ferris Forman, William Brown, and Stephen T. Logan, their attorneys, at the suit of the United States, in the plea aforesaid.

UNITED STATES OF AMERICA,
*State and District of Illinois, ss.*

Be it remembered, that on the 14th day of April, in the year of our Lord one thousand eight hundred and thirty-eight, the United States of America, plaintiffs, by David J. Baker, their attorney, sued out of the Circuit Court of the United States of America, for the District of Illinois, a summons directed to the Marshal of said District, whereby the said Marshal was commanded to summon William Linn, David B. Waterman, Lemuel Lee, James M. Duncan, William Walters, Asahel Lee, William L. D. Ewing, Alexander P. Field, and Joseph Duncan, to be and appear before the Judges of said Court, at the then next term thereof, to be holden at Vandalia, in the District aforesaid, on the first Monday of June, there next, to answer unto the said United States of America, in a plea of debt for one hundred thousand dollars, and ninety thousand dollars damages: which summons, as also an alias summons, having been returned by said Marshal, executed, &c., upon the defendants above named; thereupon, the said United States of America, by their attorney aforesaid, filed in the office of the Clerk of said Court their amended declaration in writing, in the words and figures following, to wit:

STATE AND DISTRICT OF ILLINOIS, *ss.*

The United States of America, plaintiffs in this suit, complain of William Linn, David B. Waterman, Lemuel Lee, James M. Duncan, William Walters, Asahel Lee, William L. D. Ewing, Alexander P. Field, and Joseph Duncan, defendants in this suit, who have been summoned to answer unto the said plaintiffs, in a plea of debt, &c. For that, whereas, the said defendants, and one John Hall, in his life time, now deceased, and whom the said defendants have survived, on the first day of August, in the year of our Lord one thousand eight hundred and thirty-six, at the town of Vandalia, in the county of Fayette, in the State and District of Illinois, and within the jurisdiction of this Court, by their certain writing obligatory, sealed with their seals, and to the court now here shewn, the date whereof is the same day and year aforesaid,

by the names, contractions, abbreviations, and descriptions of "Wm. Linn, D. B. Waterman, Lemuel Lee, J. W. Duncan, Wm. Walters, Asahel Lee, Wm. L. D. Ewing, A. P. Field," and "Joseph Duncan," acknowledge themselves to be held and firmly bound unto the said plaintiffs, in the full and just sum of one hundred thousand dollars, to be paid to the said plaintiffs, when they the said defendants should be thereunto afterwards requested.

And the said plaintiffs, according to the statute in such case made and provided, say, that the said writing obligatory was and is subject to a certain condition thereunder written, whereby, after reciting to the effect following, that is to say, that the President of the United States had, pursuant to law, appointed the said William Linn receiver of public moneys for the district, of lands subject to sale at Vandalia, in the State of Illinois, for the term of four years, from the twelfth day of January, one thousand eight hundred and thirty-five; by commission, bearing date twelfth February, one thousand eight hundred and thirty-five, it is provided that if the said William Linn should faithfully execute, and discharge the duties of his office, meaning the office of receiver, as aforesaid, then the said obligation was to be void, and of none effect, otherwise it should abide and remain in full force and virtue. Nevertheless, the said plaintiffs, in fact, say, that after the making of the said writing obligatory, and after the appointment of the said William Linn, to be receiver of public moneys, as aforesaid, to wit: on the twenty-second day of November, in the year of our Lord one thousand eight hundred and thirty-seven, at Vandalia, aforesaid, he, the said William Lynn, did not faithfully execute and discharge the duties of the said office, in this, to wit: that there came unto, and was then and there in the hands of him, the said William Linn, as receiver of public moneys, as aforesaid, while he was receiver as aforesaid, and within four years from the said 12th day of January, in the year last aforesaid, a large sum of money belonging to the said plaintiffs, received by him, the said William Linn, as receiver as aforesaid, and in virtue of his said office, for lands sold by the said plaintiffs, of the public lands subject to sale at Vandalia, aforesaid, to wit: the sum of four millions of dollars, which money it was, and is the duty of the said William Linn as such receiver as aforesaid, to pay to, and account for to the said plaintiffs when requested so to do. Yet the said William Linn, did not, nor hath he, nor would he pay to, or account for, to the said plaintiffs, the said last mentioned sum of money, belonging to the said plaintiffs as aforesaid, and which came into, and was in the hand of him, the said William Linn, as receiver of public moneys as aforesaid, or any part thereof, altho' often requested so to do; but he the said William Linn hath hitherto wholly refused, and still doth refuse to pay to the said plaintiffs the said last mentioned

sum of money, or any part thereof, to the great damage of the said plaintiffs.

And also, for that, whereas the said defendants, and one John Hall, in his life time, now deceased, and whom the said defendants have survived, on the first day of April, in the year first aforesaid, at Vandalia aforesaid, in the State and district aforesaid, and within the jurisdiction of this court, made their certain instrument in writing, bearing date the same day and year first aforesaid, and then and there delivered the said instrument in writing, to the said plaintiffs, and therein and thereby reciting, that the President of the United States had, pursuant to law, appointed the said William Linn, to be receiver of public moneys for the district of lands subject to sale at Vandalia, in the State of Illinois, for the term of four years, from the twelfth day of January, in the year of our Lord one thousand eight hundred and thirty-five, by commission, bearing date of the twelfth of February, in the year last aforesaid, the said defendants did then and there, in and by said instrument in writing, by the names, contractions, abbreviations, and descriptions of "Wm. Linn, D. B. Waterman, Lemuel Lee, J. W. Duncan, Wm. Walters, Asahel Lee, Wm. L. D. Ewing, A. P. Field," and "Joseph Duncan," acknowledge themselves to be held, and firmly bound unto the said plaintiffs, in the sum, and promised to pay unto the said plaintiffs the sum of one hundred thousand dollars of money, of the United States, to which payment, well and truly to be made, they the said defendants bound themselves jointly and severally, their joint and several heirs, executors, and administrators, by the said instrument in writing, which said instrument in writing was however to be void, and of none effect, in case and upon the condition, that the said William Linn should faithfully execute and discharge the duties of his office, meaning the said office of receiver of public moneys, as aforesaid, otherwise the said instrument in writing should abide and remain in full force and virtue; and the said plaintiffs in fact say, that after the making and delivery of the said instrument in writing, and after the appointment of him, the said William Linn, to be receiver of public moneys as aforesaid, and after the date last aforesaid, he, the said William Linn, entered upon, and discharged the duties of said office, and enjoyed and received for a long time, to wit, for three years next after the day and year last aforesaid, the emoluments and profits of said office, and the said William Linn did not faithfully execute and discharge, and hath not faithfully executed and discharged the duties of his said office, as aforesaid, in this, to wit: that within four years from the said twelfth day of January, and whilst he the said William Linn was receiver of public moneys, as aforesaid, there came into, and was in the hands of him, the said William Linn, as such receiver as aforesaid, a large sum of money, belonging to the said plaintiffs, received by him, the said William Linn, as such receiver, and in virtue of his office of receiver aforesaid, for lands sold by the said plaintiffs, of the

public lands subject to sale, and sold at Vandalia aforesaid, to wit: the sum of four millions of dollars of money, of the United States of America, which money so received by the said William Linn, and in his hands whilst receiver as aforesaid, it is, and was the duty of him, the said William Linn, in the faithful execution and discharge of the duties of his said office, to account for, and pay to the said plaintiffs when requested so to do; yet the said William Linn hath not, nor would he, altho' often requested so to do, to wit: on the second day of April, in the year of our Lord one thousand eight hundred and thirty-eight, at Vandalia aforesaid, account for, and pay to the said plaintiffs the said last mentioned sum of money, or any part thereof, but he the said William Linn hath hitherto wholly neglected and refused, and still doth neglect and refuse to account for, or pay to the said plaintiffs the same, or any part thereof, to the great damage of the said plaintiffs.

3d Count.

And also, for that, whereas, the said defendants, and one John Hall, in his lifetime, now deceased, and whom the said defendants have survived, on the first day of April, in the year first aforesaid, at Vandalia aforesaid, in the State and District aforesaid, and within the jurisdiction aforesaid, made their certain other instrument in writing, bearing date the same day and year first aforesaid, their own proper hands being thereunto subscribed, and then and there delivered the said instrument in writing to the said plaintiffs, and thereby, by the names, contractions, abbreviations and descriptions, of "Wm. Linn, D. B. Waterman, Lemuel Lee, J. W. Duncan, Wm. Walters, Asahel Lee, Wm L. D. Ewing, A. P. Field," and "Joseph Duncan," reciting in said instrument, that the President of the United States had, pursuant to law, appointed the said William Linn, to be receiver of public moneys for the district of lands subject to sale at Vandalia, in the State of Illinois, for the term of four years, from the 12th day of January, one thousand eight hundred and thirty-five, by commission bearing date the twelfth day of February, in the year last aforesaid, did acknowledge themselves to be held and firmly bound unto the said plaintiffs, in the full and just sum of one hundred thousand dollars of money of the United States; which said sum of money, they the said defendants bound themselves, their joint and several heirs, executors and administrators, jointly and severally by said instrument in writing, and promised well and truly to pay to the said plaintiffs, if the said William Linn, so appointed receiver as aforesaid, and to act as receiver, and in such office of receiver as aforesaid, should not faithfully execute and discharge the duties of his said office; and the said plaintiffs in fact say, that after the making and delivering of the said instrument in writing, and after the appointment of the said William Linn to be receiver of public moneys as aforesaid,

he, the said William Linn, in virtue of said appointment, entered upon and discharged the duties of said office, and enjoyed and received for a long time, next after the time last aforesaid, for a long space of time, to wit, three years, the emoluments and profits of said office, and he did not faithfully execute and discharge the duties of his said office, in this, to wit, that there came into the hands of the said William Linn, whilst he was receiver as aforesaid, and within four years from the said twelfth day of January, in the year last aforesaid, a large sum of money, belonging to the said plaintiffs, received by him, the said William Linn, in virtue of his office of receiver as aforesaid, for lands sold by the said plaintiffs, of the public lands subject to sale, and sold at Vandalia aforesaid, to wit, the sum of four millions of dollars, which money so received by the said William Linn, and in his hands whilst receiver as aforesaid, it is, and was the duty of the said William Linn as such receiver, in the faithful execution and discharge of the duties of his said office, to account for and pay to the said plaintiffs when requested so to do; yet the said William Linn did not, nor hath he, nor would he, altho' often requested so to do, account for and pay to the said plaintiffs the said sum of money last mentioned, or any part thereof; but he, the said William Linn, hath hitherto wholly neglected and refused, and still doth neglect and refuse to account for or pay to the said plaintiffs, the said sum of money last mentioned, or any part thereof; by means of which said premises, the said plaintiffs have sustained damage to a large amount, to wit, to the amount of ninety thousand dollars, whereby and action hath accrued to demand and have of, and from the said defendants, the said sum of one hundred thousand dollars. Yet the said defendants, altho' often requested so to do, have not as yet paid the said sum of one hundred thousand dollars, or any part thereof, to the said plaintiffs, but to pay to them the same or any part thereof, they the said defendants have hitherto wholly refused, and still do refuse, to the damage of the said plaintiffs of ninety thousand dollars, and therefore they sue, &c.

And thereupon, on the first Monday of June, in the year of our Lord eighteen hundred and forty-one, until which time the said defendants had leave to imparl and answer the foregoing declaration, severally came the said defendants, by Levi Davis, Ferris Forman, William Brown and Stephen T. Logan, their attorneys, and severally defend the wrong and injury, when, &c., and crave oyer of the said supposed writing obligatory, in the said declaration mentioned, and of the condition there under written, and it is read to them in these words:

"Know all men by these presents, that we, William Linn, David B. Waterman, Lemuel Lee, James M. Duncan, John Hall, William Walters, Asahel Lee, William L. D. Ewing, Alexander P. Field and Joseph Duncan, are held and firmly bound unto the United States of America, in the full and just sum of one hundred thou-

sand dollars, money of the United States, to which payment, well and truly to be made, we bind ourselves jointly and severally, our joint and several heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this first day of August, in the year one thousand eight hundred and thirty-six." They also crave oyer of the condition of the said supposed writing obligatory, and it is read to them in these words: "The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said William Linn receiver of public moneys for the district, of lands subject to sale at Vandalia, in the State of Illinois, for the term of four years, from the 12th day of January, 1835, by commission bearing 12th February, 1835. Now, therefore, if the said William Linn shall faithfully execute and discharge the duties of his office, then the above obligation to be void and of none effect, otherwise it shall abide and remain in full force and virtue.

Sealed and delivered in presence of Presley G. Pollock, as to Wm. Linn, D. B. Waterman, Lemuel Lee, J. M. Duncan, John Hall, Wm. Walters, Asahel Lee, Wm. L. D. Ewing and A. P. Field; A. Caldwell as to Joseph Duncan.

| | | | |
|---|---|---|---|
| William Linn, | [L. S.] | D. B. Waterman, | [L. S.] |
| Lemuel Lee, | [L. S.] | J. M. Duncan, | [L. S.] |
| John Hall, | [L. S.] | Wm. Walters, | [L. S.] |
| Asahel Lee, | [L. S.] | Wm. L. D. Ewing, | [L. S.] |
| A. P. Field, | [L. S.] | Joseph Duncan. | [L. S.] |

General Land Office.
Approved, August 30, 1836.

ETHAN A. BROWN.

Which being read and heard, the said defendants say, that the supposed writing obligatory is not their deed, and of this they put themselves upon the country, &c., and the plaintiffs do the like.

And the said defendants, for further plea in this behalf, jointly say, that the said plaintiffs their action aforesaid, against them, ought not to have or maintain, because they say that before the commencement of this suit, the said def'ts well and truly paid to the p!'ffs the debt in the declaration mentioned, and all damages on occasion by the determination of the same, and this they are ready to verify, wherefore they pray judgment, &c.

And for further plea in this behalf, all of the said defendants say, the said plaintiffs their action aforesaid, against them, ought not to have and maintain, because they say that said William Linn did not, after the making of the said writing obligatory, and whilst he was receiver of public moneys as aforesaid, receive any moneys belonging to the said plaintiffs, nor did there come into the hands of the said William Linn, as receiver of public moneys belonging to

the said plaintiffs, received by the said Linn as receiver as aforesaid, for lands sold by the said pl'ffs, of the public lands subject to sale at Vandalia aforesaid, four millions of dollars or any other sum, and of this they put themselves upon the country.

And for further plea in this behalf, all of the said def'ts say, the said plaintiffs their action aforesaid, against them, ought not to have and maintain; because they say that said Linn did not faithfully execute and discharge the duties of his said office as receiver of public moneys as aforesaid, and did pay to and account for the said pl'ffs, all moneys received by him as such receiver as aforesaid, for lands sold by the said pl'ffs, of the public lands subject to sale at Vandalia aforesaid, which they are ready to verify; wherefore, they pray judgment, &c.

And for further plea in this behalf, the said defendants say, the said plaintiffs their action aforesaid against them ought not to have or maintain; because they say that the said plaintiffs, before and at the time of the commencement of this suit, were, and still are, indebted to the said William Linn, in a much larger sum of money than the sum so due and owing from the said Linn to the said plaintiffs upon the said writing obligatory; that is to say, in the sum of $ for the work and labour, care, diligence, and attendance of the said William Linn, by the said Linn before that time done, performed, and bestowed in and about the business of the said plaintiffs, for the said plaintiffs, and at their special instance and request; and also for money, by the said William Linn before that time lent and advanced to, and paid, laid out, and expended for, the said plaintiffs, and at their like special instance and request; and also for money before that time had and received by the said plaintiffs, to and for the use of the said defendant, William Linn; and also for divers materials and other necessary things, by the said William Linn before that time found and provided, and used and applied in and about the business of the said plaintiffs, and at their like request: which sum of money so due and owing as aforesaid remains wholly unpaid, and exceeds the money so due and owing from the said William Linn to the said plaintiffs; and which said sum of money so due and owing from said plaintiffs to the said defendant as aforesaid, or so much thereof as shall be necessary in this behalf, he, the said William Linn, is ready and willing, and offers to set off and allow against the said sum of money so due and owing upon the said writing obligatory, according to the statute in such case made and provided; and this the said defendants are ready to verify: wherefore, they pray judgment, &c.

And the said Joseph Duncan impleaded as aforesaid, by Logan and Brown, his attorneys, comes and defends the wrong and injury, when, &c. And as to the said second and third counts in the said plaintiffs' declaration contained, says that the said plaintiffs their said action on the said second and third counts ought not to have

or maintain against him, this defendant; because, he says, that protesting that he executed the supposed written instrument declared upon in the said second and third counts of the plaintiffs' amended declaration, he says that after he had signed said instrument, and delivered it to his co-defendant, Linn, to be transmitted to the plaintiffs; and after the securities to the said written instrument had been affixed by the Hon. Nathaniel Pope, Judge of the District Court of the United States for the State of Illinois, it was, without the consent, direction, or authority of said Joseph Duncan, materially altered in this—that scrawls, by way of seals, were affixed to the signature of said Joseph Duncan to said written instrument, and to the signatures of the other parties to said written instrument, whereby the character and effect of the said written instrument, declared in the second and third counts aforesaid, was materially changed, and said instrument declared on, vitiated.

And so said Duncan says, that the said supposed written instrument declared on in the second and third counts of plaintiffs' amended declaration, is not his act and instrument,—and of this he puts himself upon the country.

And the said plaintiffs, by their said attorney, come and say as to the said plea of the said defendants, by them secondly above hereof pleaded, they ought not to be precluded from having and maintaining their aforesaid action, for by reason of any thing in that plea contained; because they say, that before the commencement of this suit, the said defendants did not well and truly pay to the said plantiffs the debt in the declaration mentioned, and all damages occasioned by the detention of the same; and of this, they put themselves upon the country.

And the said plaintiffs, by their said attorney, come and say as to the third plea of the said defendants, wherein they, the said defendants, have put themselves upon the country, the said plaintiffs do the like.

And the said plaintiffs, as to the said plea of the said defendants by them fourthly hereof above pleaded, say, they ought not to be precluded from having and maintaining their action aforesaid against the said defendants, by reason of any thing in the said plea contained; because they say, for replication to the said fourth plea, that the said defendant, William Linn, did not faithfully execute and discharge the duties of his said office as Receiver of Public Money as aforesaid; and did not pay to, and account for to the said plaintiffs, all moneys received by him, as such Receiver as aforesaid, for lands sold by the said plaintiffs, of the public lands subject to sale at Vandalia aforesaid; and of this, they put themselves upon the country.

And the said plaintiffs, as to the said plea of the said defendants by them fifthly above hereof pleaded, say, they ought not to be precluded from having and maintaining their action aforesaid against the said defendants, by reason of any thing in the said plea

contained; because they say, for replication to the said fifth plea, that the said plaintiffs before, and at the time of, the commencement of this suit, were not, and are not, indebted to the said William Linn, in manner and form, and for the causes in that plea mentioned; and of this, they put themselves upon the country.

And the said plaintiffs, by their said attorney, come and say, as to the said plea of the said Joseph Duncan, impleaded as aforesaid, above hereof pleaded to the said second and third counts of the said plaintiffs' declaration, that they ought not to be barred or precluded from having and maintaining their aforesaid action against him, the said Joseph Duncan, impleaded as aforesaid, by reason of any thing in his said plea contained; because they say, that his said plea, and the matters and things therein contained in manner and form, as the same are above in the said plea of the said Joseph Duncan, impleaded as aforesaid, stated and set forth, are not sufficient in law to bar or preclude them, the said plaintiffs, from having and maintaining their aforesaid action against him, the said Joseph Duncan, impleaded as aforesaid. Wherefore, for want of a sufficient plea in this behalf by the said Joseph Duncan, impleaded as aforesaid, to the said second and third counts of the said plaintiffs' declaration, they, the said plaintiffs, pray judgment and their debt, &c.

Causes of Demurrer.

1. The plea does not show by whom the alleged alteration of adding scrawls, by way of seals, was made; nor that the same was made after the delivery of said instrument to the officer authorized to receive it in behalf of and for the United States.

2. The alteration specified is not a material one.

3. It does not show which Duncan's consent was wanting to the making of the alleged alteration.

4. The said plea alleges special matter, which amounts only to the general issue, and should have been so pleaded.

5. The plea does not show that the said Linn was authorized by the United States to receive and transmit said instrument to the proper defendant; nor does it show what defendant was the proper one.

6. The plea contains statements which are inconsistent with each other; and is, in other respects, informal and insufficient.

And the said defendant, Joseph Duncan, impleaded as aforesaid, by Logan and Brown, his attorneys, says, he ought not to be precluded, &c.; because, he says, that the matters and things in said plea contained, are good and sufficient in law to bar the plaintiffs' action on the second and third counts of plaintiffs' declaration; and this he is ready to verify.

And now, at the June term of the said Court, in the year of our Lord one thousand eight hundred and forty-one, come as well the

said plaintiffs by their said attorney, as the said defendant, Joseph Duncan, impleaded as aforesaid, by his said attorneys; and issue being joined upon the plaintiffs' demurrer to the said plea of the said Joseph Duncan, by him pleaded as aforesaid to the second and third counts of the said declaration; and argument being had thereupon, *and argument being had thereupon*, and the Court not being sufficiently advised, took time, &c. And now, at this day, come as well the said plaintiffs, by their attorney, as the said defendant, Joseph Duncan, by his attorneys; and the premises being seen by the Court and fully understood, it appears to the Court that the plea of the said Joseph is sufficient in law to preclude them, the said plaintiffs, from having and maintaining their action aforesaid, on the aforesaid second and third counts against the said defendant, Joseph Duncan. It is, therefore, considered, that said defendant, Joseph Duncan, go hence without day, as to the second and third counts of the plaintiffs' narration herein filed.

And afterwards, to wit, on the tenth day of June, of the term of June, in the year of our Lord one thousand eight hundred and forty-one, come the parties aforesaid, by their attorneys aforesaid, before the Judges of the said Court; and issues being joined upon the pleas of the said defendants to the first count of the said plaintiffs' declaration contained, thereupon come the jurors of a jury; to wit, Geo. Myers, James Cutler, Wm. C. Enos, Saml. S. Miller, Saml. H. Ritchey, Marcus D. Lusk, Jeremiah A. Townsend, Lemuel Andrews, Philo Beers, S. R. Dolbee, and James Mitchell; who, being duly elected, tried, and sworn well and truly to try the issues joined as aforesaid, upon their oath do say, that they find the issues aforesaid for the defendants. Wherefore, it is considered by the Court, that said defendants go hence without day.

CIRCUIT COURT OF THE UNITED
*for the District of Illinois.*

THE UNITED STATES OF AMERICA, Pl'ffs,
*vs.*
WILLIAM LINN and others, def'ts.

Be it remembered, that upon the trial of this cause, the plaintiffs having proved the execution in such manner as the law requires, introduced and read in evidence to the jury, the writing obligatory described in the first count of the declaration, in the words and figures following:

"Know all men by these presents, that we, William Linn, David B. Waterman, Lemuel Lee, James M. Duncan, John Hall, William Walters, Asahel Lee, William L. D. Ewing, Alexander P. Field and Joseph Duncan, are held and firmly bound unto the United States of America, in the full and just sum of one hundred

thousand dollars, money of the United States; to which payment, well and truly to be made, we bind ourselves jointly and severally, our joint and several heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this first day of August, in the year one thousand eight hundred and thirty-six.

The condition of the foregoing obligation is such, that whereas, the President of the United States hath, pursuant to law, appointed the said William Linn receiver of public moneys for the district, of lands subject to sale at Vandalia, in the State of Illinois, for the term of four years, from the 12th day of January, 1835, by commission bearing date 12th February, 1835.

"Now, therefore, if the said William Linn shall faithfully execute and discharge the duties of his office, then the above obligation to be void, and of none effect, otherwise, it shall abide and remain in full force and virtue.

"Sealed and delivered in presence of Presley G. Pollock, as to Wm. Linn, D. B. Waterman, Lemuel Lee, J. M. Duncan, John Hall, Wm. Walters, Asahel Lee, Wm. L. D. Ewing and A. P. Field; A. Caldwell as to Joseph Duncan.

| | | | |
|---|---|---|---|
| (Signed,) Wm. Linn, | [L. S.] | D. B. Waterman, | [L. S.] |
| Lemuel Lee, | [L. S.] | J. M. Duncan, | [L. S.] |
| John Hall, | [L. S.] | Wm. Walters, | [L. S.] |
| Asahel Lee, | [L. S.] | Wm. L. D. Ewing, | [L. S.] |
| A. P. Field, | [L. S.] | Joseph Duncan, | [L. S.] |

I consider the securities sufficient.

NATH'L. POPE.

August 12th, 1836.

General Land Office.—Approved, August 30th, 1836.

ETHAN A. BROWN.

After the reading of which bond to the jury, the defendants called a witness, who testified in substance, that he saw the bond after the same had been signed by the obligors, in the hands of the said William Linn, the obligor first named therein, after it had been returned from N. Pope, Esq., the District Judge, with his certificate endorsed of the sufficiency of the securities; that the District Judge in a note in writing accompanying the bond had pointed out the omission of seals to the names of the signers of the instrument, and said Linn saying he would obviate that difficulty, took a pen, and in the presence of the witness added scrawls by way of seals to each name subscribed, as maker of the instrument; the witness also testified that Joseph Duncan, one of the signers, then resided at Jacksonville, ninety miles distant from Vandalia, where Linn resided and kept his office as receiver of the public moneys, in which office he affixed the scrawls as above. Whereupon, as tending to maintain the issue on their part, the plaintiffs proved by same witness on the cross examination, and by other witnesses,

that Joseph Duncan was Governor of the State, at the time of the date of the bond, and a brother-in-law of Linn; that Linn lived then at Vandalia, the seat of Government, and Joseph Duncan was frequently at his house, and stayed with him, but there was no proof that he was there for some months, about the time the bond was dated; that all the co-obligors of Linn, except Joseph Duncan, resided at Vandalia, and were near neighbors and intimate friends of Linn, and all of them except William Walters had been on his official bond several times before, and that Joseph Duncan had been his security all the while, since his first appointment to office; he, Linn, and Lemuel and Asahel Lee had contracts together on the National road, at and near Vandalia, and James M. Duncan is his brother-in-law; that about the time of the commencement of this suit, and speaking in reference to the bond sued on, all the defendants except Walters and Joseph Duncan had been heard to say, they were on Linn's bond; that after the rumor of Linn's being a defaulter, Joseph Duncan came to Vandalia, and Linn executed to him a mortgage on property lands to indemnify him for being his security, but whether as an indemnity against this or other bonds, witness did not know. It was admitted, that judgments had been obtained against Joseph Duncan on prior bonds, to the amount of about $28,000. The defendants spoke generally of being Linn's securities, and on reference to the $100,000 bond in this suit, James M. Duncan at the time he spoke of being on Linn's bond, said there were no seals when he signed it, and that he had given no authority to put his seal to it. One of the witnesses was in the receiver's office at the time Linn received the bond from Judge Pope, and he immediately put the seals to the bond, without consulting with the sureties; that Linn was receiver in August 1836, as well as long before, and Col. Charles Prentice was register, and authorized by the Government to receive Linn's bond, and transmit it to the Commissioner of the General Land office at Washington, and on the 16th of August, 1836, he did receive said bond and transmit it by mail to said Commissioner as authorized; the practice has ever been for the receiver's bond to be delivered to the register, as was done with this bond. It was admitted by the defendant's counsel upon the trial, that "A. Caldwell has signed the bond as a witness to the signature of Joseph Duncan, at his request." Upon which testimony, the counsel for the plaintiffs moved the court to instruct the jury.

1. "That the signing of their names by the defendants to the bond or writing read in evidence in this case, and the delivery thereof, is the material part of the execution of the same; and if from the evidence adduced, the jury shall believe the defendants signed said bond with their own proper hands, as the same now reads, then the making of the ink scrawls, by way of seals, is mere matter of form, and even if the scrawls now placed opposite to the names of the obligors were, after the signing of their names, placed there by said William Linn, their consent for his so doing may be implied,

and may be so found by the jury, from the nature of the act, and the transaction, and from their acknowledging said bond or instrument upon its face, as they have done, to have been "sealed with their seals."

2. "That if from the evidence given in this case upon the trial, the jury shall believe, the ink scrawls by way of seals, now on said bond or instrument offered in evidence, were put thereon, opposite to the several names of the obligors or makers by themselves, or by any one of them, or by any other person by their implied or express consent, altho' after it was handed to Nathaniel Pope, Esq'r., the United States Judge of the District Court for the District of Illinois, for his certificate of the sufficiency of the sureties of the said William Linn, yet *before* it was delivered into the hands of the agent of the United States, authorized to receive it, the same is, in the absence of all other objections, good and valid against the obligors or makers, the defendants in this case."

3. "That the contract in this case was not perfected, until the delivery of the bond to the officer of the Government authorized to receive it in behalf of the obligees, and if from the evidence adduced, they shall believe the said William Linn affixed the ink scrawls by way of seals, opposite to the several names of the defendants, his sureties in this bond, before its delivery to the register or officer authorized to receive it; then they have the right, from the nature of the transaction and the circumstances attending it, to consider the thus affixing those seals as done merely for the purpose of correcting a mistake, and in furtherance of the *original intention* of the obligors, and for the doing of which, their consent may be *implied* or *inferred*, and that the instrument sued on is not thereby invalidated," all of which three foregoing instructions, the court refused to give, and instructed the jury.

1. "If they shall find from the evidence, that after the instrument upon which the action is brought, was signed by the defendants, it was altered by William Linn, one of the defendants, without the knowledge or assent of the other defendants, by adding to the names of the defendants the scrawl seals which now appear upon the face of the instrument, and such defendants have not, at any time since the alteration, sanctioned it, the instrument is not the deed of such defendants, and the jury will find a verdict in their favor."

2. "If the jury believe that the defendants would have added their seals, or sanctioned the addition of them by Linn, had they have been requested to do so, still this does not conduce to show that they sanctioned the act of Linn; but if the jury shall believe from the testimony and nature of the transaction, that Linn was authorized by the other defendants to make the instrument signed by them conform to the law, by adding the seals, so as to be accepted by the department, the jury will find for the plaintiffs." The court also added, "that it did not consider the evidence given in the case as

establishing either the authority of Linn to add the seals, or that his act in doing so was sanctioned by the defendants subsequently. But this the court informed the jury was given as matter of opinion, and was not binding on them.

There was no dispute upon the evidence, as to the existence or amount of Linn's defalcation, while acting as receiver, after the date of, and during the time specified in the bond or instrument in writing, sued on in this case. To which refusal of the court to give the foregoing instructions as asked by the plaintiffs, and to the giving of the instructions above stated to have been given, the said plaintiffs by their counsel except and pray, that this their bill of exceptions may be signed and sealed, and made a part of the record of the case, which is done accordingly. A judgment having been obtained against Linn, for the full amount of his defalcation, a judg't on this bond was not asked against him or any of the defendants, unless the jury should find against all the defendants.

JOHN McLEAN, [L. S.]

In testimony that the foregoing is a true and correct copy of the narration and pleas filed with the proceedings of the court thereon in the suit, in the Circuit Court of the United States of America, for the District of Illinois, wherein the United States of America were plaintiffs, and William Linn, David B. Waterman, Lemuel Lee and others [L. S.] were defendants, I, James F. Owings, clerk of said circuit court, have hereunto affixed the seal of said circuit court, and subscribed my name this twelfth day of June, A. D. eighteen hundred and forty-one, and of our Independence the 65th year.

JAMES F. OWINGS, *Clerk*
*U. S. Circ't C't Dis't Illinois.*

Filed 24th July, 1841.

ILLINOIS—*June term*, 1841.

*The United States* vs. *Linn & others.*

It was formerly held, that an alteration of a material part of a deed, even by a stranger, would avoid it.

But the rule is now settled, that such an alteration, made accidentally, or by a stranger, does not vitiate the deed.

It is incumbent on the party who claims under the deed, to explain, either to the court or jury, any material alteration on the face of it.

Where a receiver of public monies, with his sureties, executed a paper in the usual form of an official bond, without seals, and the instrument was sanctioned by the district Judge, after which seals were affixed to the instrument without the knowledge or assent of the sureties held, that the instrument was thereby avoided.

Mr. Baker, and Mr. Butterfield, district attorney, appeared for the plaintiffs, and Messrs. Logan, Brown and Davis, for the defendants.

Opinion of the court.

This action is brought on an official bond, given by Linn, as receiver of public monies, and signed by the other defendants as his sureties.

The first count in the declaration, was on the official bond.

The second and third counts, were on instruments of the same tenor as an official bond, but not under seal.

To the first count, the defendants pleaded non est factum. To the second and third counts, the defendant, Joseph Duncan, pleaded, that after he had signed said written instrument, and delivered it to his co-defendant, Linn, to be transmitted to the plaintiffs, and after the securities to said written instrument had been approved by the Hon. Nathaniel Pope, Judge of the district court for Illinois, it was without the consent, direction or authority of said Joseph Duncan, materially altered in this; that scrawls, by way of seals, were affixed to the signature of the said Joseph Duncan, to said written instrument, and to the signatures of the other parties to said written instrument, whereby, the character and effect of said written instrument, declared on in the second and third counts aforesaid, were materially changed, and said instrument declared on vitiated.

And so the said Duncan says the instrument so declared on, is not his act and instrument, and of this he puts himself upon the country.

The plaintiffs filed a special demurrer to this plea, and assigned the following causes of demurrer.

1. The plea does not show by whom the alleged alteration of

adding scrawls, by way of seals, was made. Nor that the same was made after the delivery of said instrument to the officer authorised to receive it, in behalf of, and for the United States.

2. The alteration specified, is not a material one.

3. It does not show which Duncan's consent was wanting, there being two of that name defendants, to the making of the alleged alteration.

4. The said plea alleges special matter, which amounts to the general issue, and should have been so pleaded.

5. The plea does not show that the said Linn was authorised by the United States to receive and transmit said instrument to the proper department, nor does it show what department was the proper one.

6. The plea contains statements which are inconsistent with each other, and it is in other respects informal and insufficient.

There can be no question that the alteration of the writing set out in the plea, is a material one. It changes the character of the instrument.

If valid, as executed by Duncan, for any purpose, it must be by showing a consideration which does not appear on the face of the instrument. But the seals which were affixed to it, as averred in the plea, import a consideration. And at the time this was done, it was a matter of great doubt whether, as an unsealed instrument, any effect could be given to it.

In Whelpdale's case, 5 Coke's Rep. 119, and the second resolution in Piggott's case, 1 Coke, Rep. 27, it was held, that any material alteration in a deed, if made even by a stranger, vitiates it. And in the case of Baster vs. Miller, 4 Term, Rep. 338–9, that an alteration of the date of a bill of exchange, after acceptance, whereby the payment would be accelerated, avoids the instrument. To the same import are the cases in 5 Term, Rep. 367, 24 Bla. 141, 1 Anstr. 225, Powell vs. Divett, 15, East 29.

The early decisions have been somewhat modified by subsequent ones, in regard to the alteration of a deed accidentally, or by the act of a stranger. If a lost or destroyed deed may be sued on, why not a deed that has become defaced, either by accident, or by one who had no interest in it. In the case of Read vs. Brookman, 3 Term, Rep. 151, Lord Kenyon says, that which was supposed to be the old law, was founded on a mistake; and that the law of the country has, in this respect, in modern times, been better adapted to general convenience. If a deed may be rendered available to a party, notwithstanding its total destruction, upon what principle can he be deprived of the benefit of it, where it has suffered a partial injury, either from accident or the act of a stranger, over which he had no control. To the same import, is the case of Henfree vs. Bromlee, 6 East, Rep. 309.

But on whom does the law devolve the necessity of showing that the alteration of an instrument, though material, does not viti-

ate it. This, of course, must be done by the party who claims under it.

If an action be brought upon a lost instrument, it is incumbent on the plaintiff to prove its loss, and then by parol evidence to establish its contents. And so where the seal has been broken off, or a material alteration on the face of the instrument appears, the person who has possession of it, must show to the court or jury, how the alteration was made, and that it does not affect the validity of the deed. To require this proof from the defendant would be preposterous. Can he be supposed to know how or when the alteration was made.

The plaintiff brings an action of covenant or debt on a sealed instrument, and on the trial he offers in evidence a paper without seal. Must the defendant prove that the paper never had a seal? And the rule would not be less absurd which should require a defendant to show that a material alteration was not made by a stranger or by accident. Prima facia the alteration vitiates the deed, and the explanation must come from the holder of it. He is the only person who is supposed to have a knowledge of the fact. And this is the established rule on the subject.

Erasures or interlineations in the substantial part of an acceptance or other instrument, are presumed to be false or forged, and must be satisfactorily accounted for, before the instrument can be received in evidence. McMicken vs. Beauchamp, 2 Millers Louis, Rep. 290.

And in the case of Henman vs. Dickinson, 5 Bingham's Rep. 183, it was held, where a party sues on an instrument, which on the face of it appears to have been altered, it is for him to show that the alteration has not been improperly made.

Chief Justice Best said, we are of opinion, that where an alteration appears upon the face of a bill, the party producing it must show that the alteration was made with the consent of parties, or before the issuing of the bill. And Parker, Justice, remarked, where the plaintiff sues on an instrument which has manifestly been altered, it is for him to show that the alteration was not improperly made. I am sure this has been decided, and good sense points out that it ought to be so, because the defendant can have no means of knowing the circumstances of a subsequent alteration. All the other Judges concurred.

There is a nisi prius case before Lord Lyndhurst, while chief Baron, of Taylor vs. Moseley, 6 Car & Payne, 273, which has been thought to be somewhat in conflict with the above, but in principle, there is no conflict between the two cases.

Lord Lyndhurst submitted the fact of alteration to the jury, and in his charge said that it was a question for the jury, "whether the date had been altered after it was made and delivered by the defendant, and so had become a perfect instrument; and that it

certainly lay on the plaintiff to account for the suspicious form and obvious alteration of the note."

In Bishop v. Chambre, 3 Car. and Payne, 55, Lord Tenterdon said, the word may, in the note, is in a different hand, and it is clear that something had been cut off; and where a note appears to have undergone alteration, the party suing on it must account for that.

It may then be assumed as a well established rule, that where the material alteration appears upon the face of the paper, the explanation must be made by the party using it as evidence. And whether the alteration appear upon the face of the paper, or by plea, the truth of which is admitted by a demurrer, there would seem to be, in this respect, no ground of difference.

The plea in this case alleges, that after it was signed by the defendant and delivered to Linn, the principal in the obligation, to be transmitted to the plaintiffs, and after the securities to the instrument had been approved by the district judge, without the consent of defendant, it was materially altered, &c. Now, that the instrument was altered, as stated in the plea, is admitted, and the question is, whether the plea does not show that the instrument has been vitiated. This is the point made by the demurrer. The plaintiffs offer no explanation, to show that the alteration was made accidentally, or by a stranger, but they seek to recover upon it without such explanation.

Was it necessary in the plea to allege this fact, if it exist? It is not necessary to allege it in the plea, unless the defendant is bound to prove it. And that he is not bound to prove it, if it exist, is shown by the authorities above cited.

The defendant could not aver that the alteration was not made by a stranger nor by accident, because such an averment would not be susceptible of proof. Nor is he bound to aver by whom the alteration was made. He states that it was made without his assent, after the instrument had been approved by the judge. This approval was the sanction given by the government; and by it, the instrument was perfected. Whether the instrument was returned to Linn by the judge, does not appear. But, whether it was so returned or not, there can be no doubt that the person in whose hands it was placed, become the agent of the Government for the purpose of transmitting it. After the sanction of the judge, the parties were bound by the instrument. Suppose the judge returned the instrument to Linn, and he had destroyed it, but went on in the discharge of his duties as Receiver of Public Moneys, and become a defaulter, could not the securities have been made liable? Of this, it is supposed, there can be no doubt. And if this be so, then the plea shows that the alteration was made after the instrument had a legal existence.

Instead of demurring, the plaintiffs should have pleaded over, and alleged any explanation, if any can be given, why the instru-

ment should not be avoided. At the time of the alteration, the paper was in the hands of the plaintiffs, or their agent; and as they now endeavor to enforce it against the defendant, they must show it is a subsisting obligation. The fact of the alteration is presumed to be within their own knowledge, and they are bound to account for it. We, therefore, may safely come to the conclusion, that it was not necessary in the plea to allege by whom the alteration was made.

It is a general rule of pleading, that matters which should come more properly from the other side, need not be stated. It is only necessary, in pleading, to establish a prima facia charge or answer. The party is not bound, in his declaration or plea, to answer every possible exception, answer, or objection, which may exist. 1 Chitt. on pl. 254; 2 Saund. 62, a. n. 4.

This objection to the plea being disposed of, the others will require but little consideration.

There is no uncertainty in the plea as to which of the Duncans' consent to the alteration was wanting. And it was not necessary to allege, in the plea, that Linn was authorised to transmit the paper to the proper department of the government. It was enough to state that the alteration was made after the instrument had a binding force on the defendant. The law would impose the duty to forward the paper to the Treasury Department, into whosesoever hands it was placed by the judge. And the act of thus placing the paper in the hands of Linn, or any other person, would, as before remarked, make him an agent for this purpose.

It is objected to the plea, that special matter is set up in it, which amounts to the general issue. The plea is an answer to the second and third counts of the declaration. The action is debt, and in these counts a simple contract is set out; the general issue is nil debet, that the defendant doth not owe the said sum in manner and form as the plaintiff complains against him.

Now it will be difficult to support the position, that the facts of the plea amount to this issue. The plea admits the signing of the paper without seals, and alleges that it was afterwards materially altered by seals being affixed to it.

It might as well be said that the pleas of infancy, bankruptcy, release, payment, in the action of assumpsit, could not be pleaded specially, because, in effect, they amount to the general issue; and the matter might be given in evidence under the general issue.

And so in the present plea, if the alteration which the demurrer admits shall vitiate the instrument, the result will be the same, as if the plea of nil debet should be sustained. The result is the same, but the means of arriving at it is very different.

Great improvements have recently been adopted, on the subject of pleading by the English common law courts. The illogical and indefinite extent of the general issue in the action of assump-

sit, has been limited to its grammatical and appropriate terms. Non assumpsit operates only as a denial of the express contract, or promise alleged, under the late reform. Formerly, it put in issue every allegation in the declaration, the promise, the inducement, the consideration, and all averments in fact; and admitted of every description of defence to show that the promise was void, voidable, or had been performed.

By the same rules the plea of nil debet has been abolished. Those changes require special pleas in the action of assumpsit, and in other actions, which apprise the opposite party of the grounds of the defence. And this should be the object in all pleadings.

Mr. Chitty says the defendant was always at liberty to plead any matter which did not amount to the general issue, and admitted that in fact a contract was made, but insisted that it was void or voidable, &c. The present plea does not deny, but admits the execution of the instrument set out in the second and third counts, and thereby gives color to the plaintiffs' right; but alleges that it has been altered, since its execution, so as to avoid it. The plea, therefore, is properly filed, and comes within the rule laid down by Chitty.

The inconsistency in the statements of the plea, or its informality alleged, as the sixth cause of demurrer, is not perceived beyond the matters above considered.

The demurrer to the plea is overruled.

Afterwards, at the same term, a jury were empanneled to try the issue on the first count in the declaration.

The hand-writing of the subscribing witness to the bond was proved, it appearing that he is not now a resident of the State. The signature of Joseph Duncan, the defendant, was also proved.

A witness was then examined by the defendant, who stated that he saw the instrument after it was signed, in the Receiver's office, and there were no seals on it. This was after the approval of Judge Pope was indorsed on the bond. In returning the bond to Linn, Judge Pope stated, in a note, that the instrument was not good as a bond, it having no seals. Linn then observed, he would obviate the difficulty, and he put a scrawl seal to each signature on the bond.

The plaintiffs then proved that the defendant, Duncan, was the brother-in-law of Linn, that he was then Governor of Illinois, and that the Receiver's office was kept at Vandalia, the seat of government. But there was no proof that Duncan was at Vandalia between the signing of the bond, and the transmission of it to the Treasury Department. It was transmitted the 16th August, 1836.

The court instructed the jury, if they shall find, from the evidence, that after the instrument on which the action is brought, was signed by the defendants, it was altered by William Linn, one of the defendants, without the knowledge or assent of the

other defendants, by adding to the names of the defendants the several seals which now appear upon the face of the instrument, and such defendants have not, at any time since the alteration, sanctioned it,—the instrument is not the deed of such defendants, and the jury will find a verdict in their favor.

If the jury believe that the defendants would have added their seals, or sanctioned the addition of them by Linn, had they been requested to do so, still this does not conduce to show that they sanctioned the act of Linn. But if the jury shall believe from the testimony and nature of the transaction, that Linn was authorised by the other defendants to make the instrument signed by them conform to the law, by adding the seals, so as to be accepted by the Department, the jury will find for the plaintiffs.

The jury returned a verdict for the defendants.